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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/608,864	06/27/2003	Jee Fung Pang	30835/302623	8199
45373 7590 10/16/2008 MARSHALL, GERSTEIN & BORUN LLP (MICROSOFT) 233 SOUTH WACKER DRIVE 6300 SEARS TOWER CHICAGO, IL 60606				
EXAMINER				
MIRZA, ADNAN M				
ART UNIT		PAPER NUMBER		
2445				
MAIL DATE		DELIVERY MODE		
10/16/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/608,864

Applicant(s)

PANG ET AL.

Examiner

ADNAN M. MIRZA

Art Unit

2145

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10/6/2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-27 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-27 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SF/ICE)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1-27 are rejected under 35 U.S.C. 102(e) as being unpatentable by Levine et al (U.S. 5,835,702).

As per claims 1,9,17,25 a performance counter framework for rendering performance counter data in a computer system, the performance counter framework comprising: an application program interface comprising a set of functions including: a counter registration function called by the performance counter provider application process to register a performance counter structure within an address space of the counter provider application process (col. 2, lines 51-64), wherein the counter registration function registers an access function for retrieving performance counter data from the performance counter structure; and a counter query function called by the performance counter consumer application process to retrieve counter data from the performance counter structure within the address space of the counter provider application process by invoking the access function (col. 9, lines 32-55).

3. As per claims 2,10,18 Levine disclosed wherein the access function operates within the address space of the counter provider application process to retrieve the performance counter data from the performance counter structure (col. 9, lines 17-25).
4. As per claims 3,11,19 Levine disclosed wherein the access function is a callback function (col. 10, lines 7-16).
5. As per claims 4,12,20 Levine disclosed wherein the registration function further supports specifying a data template describing the performance counter data (col. 9, lines 17-25).
6. As per claims 5,13,21 Levine disclosed wherein the application program interface includes a method for installing a description of the performance data furnished by a provider associated with the performance counter provider application process (col. 2, lines 51-64).
7. As per claims 6,14,22 Levine disclosed wherein the description of the performance data includes a performance counter data schema (col. 7, lines 35-47).
8. As per claims 7,15,23 Levine disclosed wherein the application program interface includes a method for requesting a block of data items to be created according to a specified dataset template (col. 9, lines 17-25).

9. As per claims 8,16,24 Levine disclosed wherein the application program interface includes a method for providing a list. of registered datasets (col. 4, lines 24-36).

10. As per claims 26 Levine disclosed performance counter provider application process for use in a performance counter system embodying a performance counter provider/consumer model, the performance counter provider comprising executable instructions for: requesting, via an application program interface, an operating system to allocate a memory space within the provider application process for a performance counter data structure (col. 6, lines 21-31); storing performance counter information within the memory space; and providing access by a registered callback function (col. 4, lines 64-67 & col. 5, lines 1-9), invoked by a call to the application program interface, to the memory space containing the performance counter data structure (col. 9, lines 17-25).

11. As per claim 27 Levine disclosed a performance counter system comprising: a performance counter provider; a performance counter consumer; and an operating system performance counter application program interface comprising a first set of functions callable by a performance counter provider application process to register the performance counter provider in a repository (col. 9, lines 43-55), and a second set of functions for serving requests originating from the performance counter consumer to enumerate and access the performance counter provider (col. 2, lines 51-64).

Response to Arguments

12. Applicant's arguments filed 06/19/2008 have been fully considered but they are not persuasive. Response to applicant's arguments are as follows.

A. According to applicant's argument all the limitations of the independent are not taught in the prior art.

As to applicant's argument Levine disclosed, "A code point is inserted within a control register of the performance monitor, where the code point notifies the performance monitor to begin counting a particular event. Generic code points may then be inserted into other control register locations pertaining to one or more of the other counters within the performance monitor, where by these generic code points inform their associated counters to begin counting other parameters with respect to the event indicated within the first performance counter (col. 2, lines 53-63)". Levine also disclosed, "Selected performance monitor includes reconstructing a relationship among events, identifying false triggering, identifying bottlenecks, monitoring stalls, monitoring idles, determining the efficiency operation of a dispatch unit, determining the effectiveness of branch unit operations, determining a performance penalty of misaligned data accesses, identifying a frequency of execution of serialization instructions, identifying inhibited interrupts, and applying Little's law to identify efficiency (col. 9, lines 33-41)". Applicant failed to show the support in the Specification and also upon reviewing examiner acknowledge any support regarding its argument about the limitations of the independent claims.

B. Applicant reiterated the argument that Levine did not disclose, “an embodiment where the elements of performance counter consumer application processes and performance counter provider application process are implemented at the software application level.

As to applicant’s argument Levine disclosed, “The selected performance monitoring includes reconstructing a relationship among events, identifying false triggering, identifying bottlenecks, monitoring stalls, monitoring idles, determining the efficiency of operation of a dispatch unit, determining the efficiency of operation of a dispatch unit, determining the effectiveness of branch unit operations, determining a performance penalty of misaligned data accesses, identifying a frequency of execution of serialization instructions, identifying inhibited interrupts, and applying Little’s law to identify efficiency (col. 9, lines 33-42).

Conclusion

13. THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

14. Any inquiry concerning this communication or earlier communication from the examiner should be directed to Adnan Mirza whose telephone number is (571)-272-3885.

15. The examiner can normally be reached on Monday to Friday during normal business hours. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jason Cardone can be reached on (571)-272-3933. The fax for this group is (703)-746-7239. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 2145

16. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at (866)-217-9197 (toll-free).

Adnan Mirza

/A. M. M./

Examiner, Art Unit 2145

/Jason D Cardone/
Supervisory Patent Examiner, Art Unit 2445